

individual is willing and able to assume, and the plan for how identified risks will be mitigated.

(d) The State must ensure that the risk management plan is the result of discussion and negotiation among the persons designated by the State to develop the service plan, the participant, the participant's representative, if any, and others from whom the participant may seek guidance.

**§ 441.478 Qualifications of providers of personal assistance.**

(a) States have the option to permit participants, or their representatives, if applicable, to hire any individual capable of providing the assigned tasks, including legally liable relatives, as paid providers of the PAS identified in the service plan and budget.

(b) Participants, or their representatives, if applicable, retain the right to train their workers in the specific areas of personal assistance needed by the participant and to perform the needed assistance in a manner that comports with the participant's personal, cultural, and/or religious preferences. Participants, or their representatives, if applicable, also have the right to access other training provided by or through the State so that their PAS providers can meet any additional qualifications required or desired by participants, or participants' representatives, if applicable.

(c) Participants, or their representatives, if applicable, retain the right to establish additional staff qualifications based on participants' needs and preferences.

**§ 441.480 Use of a representative.**

(a) States may permit participants to appoint a representative to direct the provision of self-directed PAS on their behalf. The following types of representatives are permissible:

(1) A minor child's parent or guardian.

(2) An individual recognized under State law to act on behalf of an incapacitated adult.

(3) A State-mandated representative, after approval by CMS of the State criteria, if the participant has demonstrated, after additional counseling,

information, training or assistance, the inability to self-direct PAS.

(b) A person acting as a representative for a participant receiving self-directed PAS is prohibited from acting as a provider of self-directed PAS to the participant.

**§ 441.482 Permissible purchases.**

(a) Participants, or their representatives, if applicable, may, at the State's option, use their service budgets to pay for items that increase a participant's independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

(b) The services, supports and items that are purchased with a service budget must be linked to an assessed participant need or goal established in the service plan.

**§ 441.484 Financial management services.**

(a) States may choose to provide financial management services to participants, or their representatives, as applicable, self-directing PAS, with the exception of those participants utilizing the cash option who directly perform those functions, utilizing a financial management entity, through the following arrangements:

(1) States may use a reporting or subagent through its fiscal intermediary in accordance with section 3504 of the IRS Code and Revenue Procedure 80-4 and Notice 2003-70; or

(2) States may use a vendor organization that has the capabilities to perform the required tasks in accordance with Section 3504 of the IRS Code and Revenue Procedure 70-6. When private entities furnish financial management services, the procurement method must meet the requirements set forth in 45 CFR 74.40 through 74.48.

(b) States must provide oversight of financial management services by performing the following functions:

(1) Monitoring and assessing the performance of financial management entity, including assuring the integrity of financial transactions they perform.

(2) Designating a State entity or entities responsible for this monitoring.

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(3) Determining how frequently financial management entity performance will be assessed.

(c) A financial management entity must provide functions including, but not limited to, the following:

(1) Collect and process timesheets of the participant's workers.

(2) Process payroll, withholding, filing and payment of applicable Federal, State and local employment-related taxes and insurance.

(3) Maintain a separate account for each participant's budget.

(4) Track and report disbursements and balances of participant funds.

(5) Process and pay invoices for goods and services approved in the service plan.

(6) Provide to participants periodic reports of expenditures and the status of the approved service budget.

(d) States not utilizing a financial management entity must perform the functions listed in paragraph (c) of this section on behalf of participants self-directing PAS, with the exception of those participants utilizing the cash option who directly perform those functions.

(e) States will be reimbursed for the cost of financial management services, either provided directly or through a financial management entity, at the administrative rate of 50 percent.

### **Subpart K—Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice)**

SOURCE: 77 FR 26898, May 7, 2012, unless otherwise noted.

#### **§ 441.500 Basis and scope.**

(a) *Basis.* This subpart implements section 1915(k) of the Act, referred to as the Community First Choice option (hereafter Community First Choice), to provide home and community-based attendant services and supports through a State plan.

(b) *Scope.* Community First Choice is designed to make available home and community-based attendant services and supports to eligible individuals, as needed, to assist in accomplishing ac-

tivities of daily living (ADLs), instrumental activities of daily living (IADLs), and health-related tasks through hands-on assistance, supervision, or cueing.

#### **§ 441.505 Definitions.**

As used in this subpart:

*Activities of daily living (ADLs)* means basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

*Agency-provider model* means a method of providing Community First Choice services and supports under which entities contract for or provide through their own employees, the provision of such services and supports, or act as the employer of record for attendant care providers selected by the individual enrolled in Community First Choice.

*Backup systems and supports* means electronic devices used to ensure continuity of services and supports. These items may include an array of available technology, personal emergency response systems, and other mobile communication devices. Persons identified by an individual can also be included as backup supports.

*Health-related tasks* means specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health-care professionals under State law to be performed by an attendant.

*Individual* means the eligible individual and, if applicable, the individual's representative.

*Individual's representative* means a parent, family member, guardian, advocate, or other person authorized by the individual to serve as a representative in connection with the provision of CFC services and supports. This authorization should be in writing, when feasible, or by another method that clearly indicates the individual's free choice. An individual's representative may not also be a paid caregiver of an individual receiving services and supports under this subpart.

*Instrumental activities of daily living (IADLs)* means activities related to living independently in the community, including but not limited to, meal

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